

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FILED

OCT 20 2009 A

FIRST JUDICIAL DISTRICT

Case Type: Mechanic's Lien Foreclosure

SCOTT COUNTY COURTS

In re M.W. Johnson Construction, Inc.  
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Scott County Court File: 70-CV-09-8096

Judge: Jerome B. Abrams

Mechanical Energy Systems, Inc.,

(Wright County File No: 86-CV-08-7349)

Plaintiff,

vs.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, ORDER FOR SUMMARY  
JUDGMENT AND JUDGMENT**

James L. Bystrom, an individual;  
Rebecca A. Bystrom f/k/a Rebecca A.  
Lee, an individual; Mrs. James Bystrom,  
an individual; Bell America Mortgage,  
LLC, d/b/a Bell Mortgage, a Minnesota  
limited liability company; Mortgage  
Electronic Registration Systems, Inc., a  
Delaware corporation; City-County  
Federal Credit Union, a Minnesota  
corporation; Kampfer Floor Company, a  
Minnesota corporation; and XYZ  
Corporation, ABC Partnership, John Doe  
and Mary Roe, whose true names are  
unknown to Plaintiff,

Defendants.

The above-entitled matter came on for hearing before this Court and the undersigned Judge on August 5, 2009, at the Scott County Courthouse pursuant to the Motion for Summary Judgment of Plaintiff Mechanical Energy Systems, Inc ("Mechanical Energy"). Ryan J. Hatton, Esq. appeared on behalf of Mechanical Energy. Steven R. Little, Esq. appeared on behalf of Defendants James L. Bystrom, Rebecca A. Bystrom, f/k/a Rebecca A. Lee, a/k/a Mrs. James

Bystrom (the “Bystroms”) and their lender Mortgage Electronic Registration Systems, Inc., as nominee for Bell America Mortgage, LLC, d/b/a Bell Mortgage (“MERS”) (collectively “Defendants”). This case was transferred from Wright County District Court, Wright County Court File No. 86-CV-08-7349.

The Court, having heard the evidence introduced at the hearing, having examined all the files, records and proceeding herein, and being fully advised in the premises, makes the following Findings of Fact, Conclusions of Law, Order for Summary Judgment and Judgment:

### **UNDISPUTED FACTS**

1. On and between May 24, 2006 and August 31, 2007, pursuant to a contract with M.W. Johnson Construction, Inc. (“MW Johnson”), Mechanical Energy furnished certain materials and/or labor (“Materials and/or Labor”) in the construction of a home at 6642 Oak Leaf Court, Monticello, Minnesota legally described as Lot 10, Block 1, Parkside at Meadow Oak Second Addition, Wright County (the “Property”).
2. The agreed-upon price and reasonable value of the Materials and/or Labor was \$11,739.00.
3. All of the Materials and/or Labor were furnished for and actually used in the improvement of the Property with the knowledge and consent of the parties to this action.
4. No pre-lien notice was required under Minn. Stat. § 514.011.
5. On September 21, 2007, and within 120 days after furnishing its last item of contribution in the improvement of the Property, Mechanical Energy served by certified mail, return receipt requested, a copy of its verified Mechanic’s Lien Statement on MW Johnson and Royal Oaks Realty, Inc.
6. On September 24, 2007, and within 120 days after furnishing its last item of

contribution in the improvement of the Property, Mechanical Energy recorded its verified Mechanic's Lien Statement in the office of the Wright County Recorder as Document No. A1066875 ("Mechanical Energy's Mechanic's Lien Statement").

7. The Bystroms are the current fee owners of the Property.

8. MERS is the holder of a mortgage dated September 11, 2007, in the amount of \$280,700.00 secured by the Property, given by the Bystroms, as mortgagors, in favor of MERS, as mortgagee, and recorded in the Office of the Wright County Recorder on October 17, 2007, as Document No. A1069500 (the "MERS Mortgage").

9. Defendant City-County Federal Credit Union ("CCFCU") is the holder of a mortgage dated April 22, 2008, in the amount of \$17,217.34 secured by the Property, between the Bystroms, as mortgagors, in favor of CCFCU, as mortgagee, and recorded in the Office of the Wright County Recorder on May 30, 2008, as Document No. A1089576 ("CCFCU Mortgage").

10. Mechanical Energy's Mechanic's Lien is prior and superior to the liens of the MERS Mortgage and CCFCU Mortgage.

11. Kampfer Floor Company, a Minnesota corporation ("Kampfer Floor"), recorded a mechanic's lien statement against the Property dated February 19, 2008, in the amount of \$5,013.00, recorded in the office of the Wright County Recorder, Wright County, Minnesota, on February 21, 2008, as Document No. A1080118 ("Kampfer Floor Mechanic's Lien").

12. Despite being properly served, Kampfer Floor made no appearance in this matter. The time for Kampfer Floor to enforce its mechanic's lien has expired. Kampfer Floor's Mechanic's Lien of Kampfer Floor is expired and is void and no affect as an encumbrance against the Property.

### CONCLUSIONS OF LAW

1. Mechanical Energy Systems is entitled to summary judgment.
2. Mechanical Energy Systems, Inc. Mechanic's Lien against the Property is valid and enforceable in the amount of \$11,739.00 in principal together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$1,162.03 through August 5, 2009, and interest continues to accrue at the rate of \$1.30 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 4633.50 and costs of \$ 823.50 for a total judgment of \$ 18,456.83.
3. Mechanical Energy's Mechanic's lien is prior and superior in all respects to the MERS Mortgage recorded as Document No. A1069500 and the CCFCU Mortgage recorded as Document No. A1089576.
4. Kampfer Floor's Mechanic's Lien is void and of no affect against the Property.
5. Mechanical Energy Systems, Inc.'s Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Wright County, Minnesota at a public auction in the manner provided by Minnesota Statutes for the Sale of Real Property upon execution.
6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Mechanical Energy Systems, Inc. with interest at the judgment rate provided herein from the date this Judgment is entered to the date of said sale.
7. The sale shall be reported to and made subject to the approval of this Court. At that time, Mechanical Energy Systems, Inc. may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

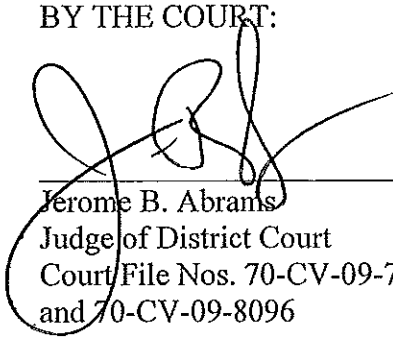
8. That all the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that the Bystroms and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with the statute within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holders of the MERS Mortgage and the CCFCU Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

**ORDER FOR JUDGMENT**

1. Mechanical Energy's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact, Conclusions of Law.
3. The Wright County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment against the Property legally described in Paragraph 1 of these Findings

Dated: 10-15, 2009

BY THE COURT:

  
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Jerome B. Abrams  
Judge of District Court  
Court File Nos. 70-CV-09-7343  
and 70-CV-09-8096

**JUDGMENT**

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER  
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 10-20-09  
GREGORY M. ESS  
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY Audrey K Brown